IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6924 OF 2005

1. Hercules Mechanical Works
and ors. ..Petitioners

Vs.

1. Wire Ropes Engineering
Workers Union ..Respondents

Mr. N.G. Chhatre for petitioners.
None for the respondents.

CORAM: B.H. MARLAPALLE, J.

Date : August 21, 2006.

P.C.:

1. Heard Mr.Chhatre the learned counsel for the petitioner-company. The respondent-Union had filed Complaint (ULP) No.403 of 1997 before the Labour Court, Thane regarding the alleged illegal termination of service of one Shri Yeshwant Shelar. The said complaint was resisted by the petitioner-company on the ground of delay as well as on merits. It was contended that Mr. Shelar had joined the company on 5/4/1993 and along with four other workmen came to be retrenched on 27/10/1995. He was recalled to report for duty, as some additional work was available with

the company, by letter dated 9/5/1996 and again he was called by letter dated 27/5/1996. The Union submitted a letter dated 19/7/1997 requesting to take Mr. Shelar back in service and the same request was rejected by the company by its letter dated 2/8/1997. The company, therefore, contended that the complaint was beyond time by one year and nine months and, therefore, it was required to be dismissed as no satisfactory reasons are made out to condone the delay beyond 90 days.

2. The Labour Court considered the evidence of the workman i.e. the averments in the complaint as well as oral depositions before it and noted that in response to the recall letter, the workman on the first retrenchment order had moved the Industrial Court in Complaint (ULP) No.762 of 1995 contending that he was the Joint Secretary of the Union and the workmen junior to him in service were retained in service. Thereafter, he received a letter dated 9/5/1996 and went to report for duty on 20/5/1996, but he was not allowed to report for duty unless he gave a letter as demanded by the Management and on his

refusal to give such a letter, he firstly went to the Wagle Estate Police Station on the count that he was forcibly taken out of the factory premises. He also stated that again on 25/9/1996 he went to report for duty and he was not allowed. He also stated that as per his knowledge someone else was already recruited in his place before the second letter dated 27/5/1996 was issued to him recalling him to report for duty (Mr. Mangesh Rangale) and even for the second time he was not allowed to report for duty. Under these circumstances, the Union submitted a representation on 19/7/1997 and it was replied on 2/8/1997. The Labour Court, therefore, took the view that the complaint filed on 27/8/1997 was not belated. The Industrial Court agreed with these findings and further noted that in any case on record there was a separate application filed for condonation of delay and on the reasoning given by the Labour Court there was sufficient reason to condone the delay. These concurrent findings on the point of delay do not call for any interference as they do not suffer from any error apparent on the face of the record or cannot be termed as perverse.

3. On merits, the Labour Court examined the contentions of both the sides and held that Company had retrenched Mr. Yeshwant Shelar and on issuing letter dated 9/5/1996 he was not allowed to report for duty. The Labour Court also relied upon the letter of the Union dated 19/7/1997 and recorded a finding that the concerned workman i.e. Mr. Shelar was not allowed to report for duty and, therefore, the same action amounted to illegal termination of service. The Industrial Court noted that the Company did not lead any evidence before the Labour Court and the evidence adduced by the workman could not allow the Labour Court to reach to any other finding except to hold that it was the Company which did not allow the workman to report for duty and the same amounted to illegal termination of service.

4. The concurrent view taken by both the courts below does not call for any interference in this petition under Article 227 of the Constitution and the following judgments relied upon by the learned counsel for the Company do not assist the Company:-

(a) Hindustan Lever Ltd. vs. Hindustan Lever Mazdoor Sabha and ors. (1996 II CLR 102).

(b) Spices and Oil Seeds Exchange Ltd. vs. Suhas Anant Kulkarni and ors. (1987-I LLN 395)

(c) Maharashtra State Road Transport Corporation vs. Abdul Usman Meboob Shaikh (2000 III CLR 320)

(d) Allahabad Jal Sansthan vs. Daya Shankar Rai and anr. (2005 II CLR 453).

(e) M.P. State Electricity Board vs. Jarina Bee (Smt.) (2003 III CLR 23).

(f) R.K. Kitchen Equipments (Messrs), Mumbai vs. Majid Yusuf Hurape and ors. (2003 II CLR 794).

(g) Suja Agencies vs. Uday Singh B. Rawat and anr. (2003 III CLR 1048).

5. Hence, petition is rejected summarily.

(B.H. Marlapalle,J.)